

REMARKS

The only issue outstanding in the Office Action mailed February 11, 2004, is the rejections of solely claims 20 and 21 under 35 U.S.C §103. The Examiner is thanked for indicating the allowability of the remaining claims. It is respectfully submitted that, in view of the following discussion, all claims are in condition for allowance.

Claim 20 has been rejected under 35 U.S.C §103 over Winker et al., '603 taken with Galabova et al., '974. Reconsideration of this rejection is respectfully requested.

As noted at page 2 of the Office Action, Winker discloses an optical compensator for liquid crystal displays, having at least one O plate retarder, at least one A plate retarder and at least one -C plate retarder. See, for example, column 2, lines 49-55 and Figure 8. The patentees teach that negatively birefringent C-plates may comprise uniaxially compressed polymers, stretched polymer films, or physical vapor deposited inorganic thin films. As admitted in the Office Action, at page 2, Patentees fail to teach linear or crosslinked polymerized chiral liquid crystalline materials, much less those having a helically twisted structure with a pitch of less than 250 nanometers.

In order to remedy the above deficiency, the Office Action cites Galabova, which discloses super wide-angle cholesteric liquid crystal based reflective broadband polymerizing films. Galabova teaches that their film may comprise a compensating layer which is an *infrared* (IR) cholesteric liquid crystal layer, with a helical structure, having an axis perpendicular to its surface. Patentees teach that the pitch of the IR CLC film is outside the reflection band of the broadband polarizer, and has constant or variable pitch *in the IR region*. See column 7, lines 10-25. Thus, Galabova *also* fails to teach or suggest a film which is a linear or crosslinked polymerized chiral liquid crystalline material with a helically twisted structure *having a helical pitch of less than 250 nanometers*. Instead, the material taught by patentees has a reflection wavelength in the IR range, at the opposite end of the visible spectrum from materials such as that claimed having a pitch below 250 nanometers, which would, due to the small pitch, reflect light in the UV range. As a result, even a consideration of Galabova with Winker does not teach material useful as a negative C plate retarder herein, since an IR reflective film would be

essentially unsuitable, as it would show unwanted on-axis retardation (i.e., at 0° viewing angle). As a result, it is submitted that a compensator according to claim 20 is not suggested by the combination of Winker and Galabova. Reconsideration of this rejection is therefore respectfully requested.

Claim 21 has been rejected under 35 U.S.C §103 over Shimizu, et al., EP '713.

Reconsideration of this rejection is also respectfully requested. Shimizu discloses an optical compensator containing at least one O plate retarder, at least one planer A plate retarder and at least one negative C plate retarder. As admitted at page 3 of the Office Action, Shimizu fails to disclose a second negative C plate retarder within the optical compensator. However, the Office Action relies on disclosure of Shimizu that the layers may be "composed of either a single layer or multiple layers". It is respectfully submitted that such a generic disclosure is insufficient to suggest exactly two negative C plate layers. Support for amended claim 21 may be found at page 9, lines 33 of the specification.

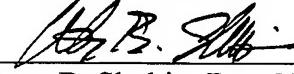
Moreover, Shimizu fails to disclose or suggest that at least one of the C layers should be a liquid crystalline material having helically pitch below 250 nanometers. Thus, newly added claim 23 is also patentable over this reference.

It is well established that a mere generic disclosure, without more, is insufficient to render an encompassed species obvious. See, for example, *In re Jones*, 21 U.S.P.Q. 2d 1941 (Fed. Cir 1992). In *Jones*, the Federal Circuit held that a disclosure of "substituted ammonium salts" was insufficient to render *any* substituted ammonium salt obvious, and looked to the examples to see which types of substituted ammonium salts might be suggested. In the present situation, where the reference generically discloses multiple layers, but fails to suggest to one of ordinary skill in the art exactly two negative C plate retarders. Indeed, the patent discloses "a" layer C, comprising "at least one" compensation layer. See page 3, lines 31-32. Clearly, one of ordinary skill in the art would not be motivated to use multiple C layers from this scant disclosure.

It is accordingly respectfully submitted that the claims of the application are in condition for allowance. However, should the Examiner have any questions or comments, he is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



Harry B. Shubin, Reg. No. 32,004
Attorney/Agent for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

Attorney Docket No.: MERCK-2388
Date: May 11, 2004

HBS:jqs
K:\Merck\2388\Reply 5-7-04.doc